

ORIGINAL

Jerry J. Jarzombek
714 W. Magnolia Avenue
Fort Worth, Texas 76104
817-348-8325
817-348-8328 fax

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
F.T. WORTH, TEXAS
2004 SEP 24 PM 12:14
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

<hr/> <p>LEE VALDEZ,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p>vs.</p> <p style="padding-left: 100px;">NCO FINANCIAL SYSTEMS, INC</p> <p style="padding-left: 100px;">Defendants.</p> <hr/>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Civil Action No.</p> <p style="text-align: center; font-size: 1.2em;">4-04CV-689-A</p> <p>COMPLAINT</p> <p>and</p> <p>DEMAND FOR JURY TRIAL</p> <p>(Unlawful Debt Collection Practices)</p>
---	---	--

Preliminary Statement

1. Plaintiff, Lee Valdez, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), as well as under the Texas Debt Collection Act, Tex. Finance Code § 392.001, et seq. ("TDCA") to obtain statutory damages, injunctive relief, declaratory relief, and other relief for the Defendant's violations of the FDCPA and the TDCA.

2. Defendant, NCO Financial Systems, Inc. attempted to collect a consumer debt allegedly owed by Plaintiff, arising from a purported obligation to NCO Financial Systems, Inc. The obligation ("Debt") required Plaintiff to pay money arising out of transactions in which money, property, insurance, or services were the subject thereof and the same were primarily for personal, family, or household purposes.

Jurisdiction and Venue

3. Jurisdiction of this Court attains pursuant to 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331 and 1337(a), and the doctrine of pendent jurisdiction for the TDCA claims pursuant to 28 U.S.C. § 1367.

4. Venue in the Northern District of Texas is proper under 28 U.S.C. § 1391(b)-(c) and because the acts and transactions occurred here and the Defendants transact business here.

Parties

5. Plaintiff is a citizen of the State of Texas. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) and Tex. Finance Code § 392.001(1).

6. Defendant is a corporation engaged in the business of collecting consumer debts in the Northern District of Texas. The principal purpose of Defendant's business is the collection of consumer debts using the mails and telephone, and it regularly attempts to collect consumer debts for others. Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Tex. Finance Code § 392.001(6). Defendant is also a "third-party debt collector" as defined by Tex. Finance Code § 392.001(7).

Factual Allegations

7. On April 1st 2004, Plaintiff sent Defendant a request to cease collection activity and a request for validation of the debt. The notice also stated that "this is a workman's compensation debt not a personal debt." A true and correct copy of the of the request and fax confirmation is attached hereto as Exhibit A.

8. Defendant continued collection efforts by sending Plaintiff a collection letter dated

May 19, 2004. A true and correct copy is attached hereto as Exhibit B.

9. The foregoing acts and omissions were undertaken on behalf of the Defendant by their respective officers, agents, or employees acting at all times relevant hereto within the scope of that relationship.

10. The foregoing acts and omission of the Defendant were committed willfully, intentionally, knowingly, and/or in gross disregard of the rights of the Plaintiff.

11. The foregoing acts and omissions of the Defendant were undertaken indiscriminately and persistently, as part of their regular and routine collection efforts, and without regard to or consideration of the identity or rights of the Plaintiff.

First Claim for Relief

12. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendant's violations of the FDCPA include, but are not limited to the following:

- a. In violation of 15 U.S.C. § 1692c(c), Defendant communicated with Plaintiff in connection with the collection of a consumer debt after receiving written notice that Plaintiff refused to pay Debt.
- b. In violation of 15 U.S.C. § 1692c(c), Defendant communicated with Plaintiff in connection with the collection of a consumer debt after receiving written notice that Plaintiff wanted to cease further communication.
- c. In violation of 15 U.S.C. 1692e(5) and the "least sophisticated consumer standard," the Defendant threatened to take an action which cannot legally be taken or that is not intended to be taken.

13. Under 15 U.S.C. § 1692k, Defendant's violations of the FDCPA render Defendant liable to Plaintiff for statutory damages, costs, and reasonable attorney's fees.

Second Claim for Relief

14. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendant's violations of the TDCA include, but are not limited to the following:

- a. In violation of Tex. Fin. Code § 392.301(a)(8), the Defendant threatened to take (and/or did take) an action prohibited by law.
- b. In violation of Tex. Fin. Code § 392.304(a)(8), the Defendant misrepresented the character of a consumer debt.
- c. In violation of Tex. Fin. Code § 392.202, the Defendant failed to send Plaintiff a written statement that denied the inaccuracies noted by Plaintiff; admitted the inaccuracy or stated that Defendant had not had enough time to complete an investigation of the inaccuracy.
- d. In violation of Tex. Fin. Code § 392.202, Defendant failed to cease collection efforts.
- e. In violation of Tex. Fin. Code § 392.202, Defendant failed to provide forms and assistance to dispute this debt.

15. Under Tex. Fin. Code Ann. § 392.403, the Defendant's violations of the TDCA render it liable to Plaintiff for statutory damages, injunctive relief, declaratory relief, costs, and reasonable attorney's fees.

Prayer for Relief

WHEREFORE, the Plaintiff prays that this Court:

1. Declare that Defendant's actions violate the FDCPA and the TDCA.
2. Enjoin the Defendant's actions which violate the TDCA.
3. Enter judgment in favor of Plaintiff and against Defendant for statutory damages, costs, and reasonable attorneys' fees as provided by 15 U.S.C. § 1692k(a) and/or Tex. Fin. Code Ann. § 392.403

Dated: September 24, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerry J. Jarzombek", is written over a horizontal line.

Jerry J. Jarzombek
Texas Bar No. 10589050

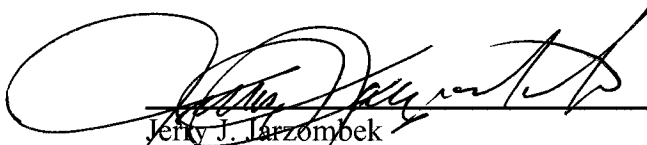
714 W. Magnolia Avenue
Fort Worth, Texas 76104
Voice: 817-348-8325
Fax: 817-348-8328

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury in this action.

Dated: September 24, 2004.

Respectfully submitted,



Jerry J. Larzombek
Texas Bar No. 10589050

714 W. Magnolia Avenue
Fort Worth, Texas 76104
Voice: 817-348-8325
Fax: 817-348-8328

EXHIBIT A

CJ AUTO FAX 4/8/2004 2:48 PM *9018173618868 1of 1

FDCPA DISPUTE NOTICE & DEMAND FOR VALIDATION DOCUMENTS

CONSUMER:

Lee Valdez
4317 Voncille St.
Haltom City, TX 76117-2949

DATE:

April 1, 2004 – **3rd NOTICE**

SENT:

Via 1st Class Mail & Fax w/RR to: **210-244-7090**

COLLECTOR:

NCO Financial Systems, Inc.
4203 Woodcock, #130
San Antonio, TX 77228

This is a Workmans Compensation Debt not a Personal Debt !!!!!

REFERENCE: #179299571 - Harris Methodist Fort Worth # 458944041004 \$808.35

NOTICE: DEBT / LAWYER / SCAVENGER DEBT BUYER / COLLECTORS

DISPUTE: This claim is disputed. Provide to me, **ALL** documentation, and other support for the claim together with documents that show you have complied with state licensing and bonding requirements.

VALIDATION must include copies of any contract containing my signature, copies of all statements and charges. The name and address of the original creditor, any subsequent owner/holder/buyer/ or servicer of this claim, including **ALL** legal documents pertaining to changes in ownership of the claim, including the *actual* amount of your exposure to this claim.

PROVIDE a listing of the items in your files about the consumer with forms and support to dispute the accuracy of these items.

WARNING: Reporting the claim to any credit-reporting agency **IS** a resumption of debt collection activity, with possible legal consequences.

PRIVACY NOTICE: **NO** information from you, on this claim, may be reported, shared, disclosed, sold, inquired or made available to **anyone** without my prior **EXPRESS** written permission.

CEASE COLLECTION and third-party activity. You must **FULLY** comply with all validation, dispute support, and investigation before commencing collections. Do not call me at work as it interferes with my job and I am not allowed to receive collection calls there. Never interfere, contact, or discuss it with my employer, neighbors, family, and friends. Attorney grievances are filed with state bars for ANY conduct deemed illegal or unprofessional.

IMPORTANT: If you do **not** validate this claim, **DELETE** all information from credit bureau files.

ARBITRATION matters may **ONLY** be filed in the *Federal Judicial District* in which I reside, which allows me the opportunity to participate. Evidence documenting my submission to arbitration covering this claim **MUST** accompany your validation documents.

LEGAL NOTICE: This is an attempt to gain compliance with Debt Collection and Credit Reporting law. Any information obtained will be used for that purpose. All calls related to collection activity may be telephonically recorded to ensure compliance. Debt collection and credit reporting violations are referred to consumer lawyers for appropriate prosecution. Criminal complaints may be filed with law enforcement agencies where warranted. Your failure to comply with all aspects of this notice within thirty days of receipt will invalidate the entire claim rendering it worthless. You will be held liable for any consequences resultant of your actions.

NOTICE OF CHANGE IN TERMS TO CREDIT CLAIM

Collector: NCO Financial Systems, Inc.
Reference: #458944041004
Creditor: Harris Methodist Fort Worth
Amount: \$808.35

DEFINITIONS: In this agreement, the words "we," "us" and "our" mean the consumer whose name appears on, and is jointly and severally bound by the terms of the original credit agreement. "You" and "Your" mean your creditor/collector/owner/holder/servicer of the account.

AGREEMENT: You will be bound by the terms of this Addendum when you receive, buy, purchase, acquire, sell, trade, or buy as defaulted or otherwise acquire resulting from a bankruptcy proceeding.

SPECIAL OFFER: You may make or attempt a single telephonic or written 15 U.S.C. §1692a (2) communication directly to me in connection with the collection of a debt. Acceptance of this offer will be complete upon the making (or attempted making) of any such communication, directly or indirectly. Your acceptance of this offer waives any right to arbitrate. My foregoing consent to such a communication does not waive or excuse any violation of law.

The New Fair Credit Reporting Act of 2004, prohibits you from sharing any information about this account with affiliates, prohibits credit reporting until such time as a validation notice has been properly answered and warns that you are liable for information supplied or reported, which the furnisher knows, or has reasonable cause to believe that information is inaccurate.

INFORMATION SHARING: NO information about this account or me may be reported, shared, disclosed, sold, or made available to anyone without my prior **EXPRESS** written permission. You are expressly **PROHIBITED** from disclosing this account, or contents, including charges, interest rates, payment history, medical, relating to medical or any personal information about me, including name, address, social security number and date of birth, to any entity, subsidiary, credit reporting agency, debt collector, attorney, law firm, debt buyer, or placement in any computer data bank or repository.

LEGAL REMEDIES: Your failure to properly respond or handle these matters in a timely fashion may result in referral to area attorneys for legal actions. Any phone calls initiated by you may be recorded to insure compliance with state and federal laws. The laws of the state where the consumer lives govern this Addendum. If any provision of this Addendum is held to be invalid, or unenforceable, you and we will consider the rest of the provisions enforceable.

LEGAL NOTICE: THIS NOTICE IS AN IMPORTANT CHANGE TO YOUR ACCOUNT/CARDHOLDER'S AGREEMENT. READ IT AND TAKE THE NECESSARY STEPS AS CONTAINED HEREIN. YOUR FAILURE TO DO SO MAY RESULT IN ADVERSE ACTIONS BEING TAKEN AGAINST YOU. THIS IS AN ATTEMPT TO MAKE A DEBT COLLECTOR OBEY THE LAW. ANY INFORMATION OBTAINED MAY BE USED FOR THAT PURPOSE.

TRANSMISSION VERIFICATION REPORT

TIME : 04/08/2004 14:50
NAME :
FAX : +09817731372901
TEL : +06718177313728001
SER.# : BROE2J371942

DATE, TIME	04/08 14:49
FAX NO./NAME	12102447090
DURATION	00:00:57
PAGE(S)	02
RESULT	OK
MODE	STANDARD
	ECM

EXHIBIT B

May 19, 2004
OFFICE HOURS:
MON - THURS: 8:00AM - 8:00PM
FRIDAY: 8:00AM - 5:00PM
SATURDAY: 8:00AM - 12:00PM

PHONE: 1-800-842-0640

LEE R VALDEZ
4317 VONC LLE ST
HALTOM CITY TX 76117-2949



HARRIS METHODIST FORT WORTH
RE: LEE RIOS VALDEZ
RE: 458944041004
BALANCE: \$ 808.35

Dear LEE R VALDEZ,

Since you have not responded to our efforts to work with you regarding payment of this account, you have left us with no choice but to have your account reviewed for further collection activity.

If we do not hear from you within 10 days, we will assume that you have no intention of paying your debt and we will proceed accordingly.

This is an attempt to collect a debt. Any information obtained will be used for that purpose. This is a communication from a debt collector.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT (MAKE SURE ADDRESS SHOWS THROUGH WINDOW)

Client Reference #: 458944041004

Account #	Due Date	Total Balance
17929957		\$ 808.35

Payment Amount



\$

Credit Card Number
(VISA and MasterCard only)

Make Payment To:

HARRIS METHODIST FORT WORTH
LOCK BOX
P.O.BOX 916063
FORT WORTH, TX 76191-6063

02381792595740000000500000000000808354

NCO 21
2576